

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#95-8 (SWMB)

SUMMARY/RESPONSE TO COMMENTS RECEIVED FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from April 1, 2001, through May 1, 2001, on IDEM's draft rule language. IDEM received comments from the following parties:

Elizabeth L. Dusold, Eli Lilly and Company (ELC)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Lilly believes that the Quarterly Tonnage Reports required under 329 IAC 11-14 should not be required for a facility which is owned by the generator of the waste and is limited to use by that person. Indiana statute provides a similar exemption for several different types of reporting related to solid waste facilities, see IC 13-20-5-1, and such an exemption should be provided to relieve owners of captive solid waste processing facilities, such as Lilly, from the burden of reporting on intracompany transfers of solid wastes. In response to Lilly's comments on April 1, 2001, IDEM has stated that on-site processing facilities or transfer station are excluded from the current rules and are not required to submit the quarterly tonnage reports. Lilly respectfully suggests that this issue needs further clarification, and suggests 329 IAC 11-14 be amended as follows:

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the solid waste processing facility that is open to accept solid waste for processing unless:

(1) the owner, operator, or permitted of the solid waste processing facility has

(a) ceased accepting solid waste for a period of at least one (1) calendar quarter; and

(b) the owner, operator or permitted of the solid waste processing facility has sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 11-16 if applicable; or

(2) the solid waste processing facility is limited to the use of the individual, corporation, partnership or business association, or a subsidiary of that entity, generating the solid waste.

This proposed change will make it clear that such reports are not required for generator-owned incineration facilities, and will save Lilly alone a significant administrative and paperwork burden. Based on IDEM's comments, the reports currently submitted by Lilly are not useful to the agency. (ELC)

Response: IDEM agrees with Lilly in that it is not clear that small permit-by-rule incinerators (329 IAC 11-19-2(a)) are not required to submit quarterly reports under 329 IAC 11-14. It should be clear that incinerators that are permitted by rule under 329 IAC 11-9-2(a) are not required to submit quarterly reports under 329 IAC 11-14. The following change was made under 329 IAC 11-14(c):

(c) The report required by subsection (a) must be submitted by the owner, operator, or permittee of the solid waste processing facility that is open to accept solid waste for processing unless **one of the following applies:**

(1) The owner, operator, or permitted of the solid waste processing facility has

(a) ceased accepting solid waste for a period of at least one (1) calendar quarter; and

(b) the owner, operator or permitted of the solid waste processing facility has sent written notification to the commissioner indicating the initiation of final closure under 329 IAC 11-16 if applicable.

(2) The solid waste processing facility is not required to obtain a permit under this article.

(3) The solid waste processing facility is only required to obtain a permit by rule under 329 IAC 11-19-2(a).

However, the blanket exemption that Lilly suggested in their comment is considered by IDEM to be too broad. It is quite clear in the rule at 329 IAC 11-19-2(b)(3) that incinerators with a design capacity greater than or equal to 10 tons per day but less than 30 tons per day must submit quarterly reports. 329 IAC 11-19-2(b)(3) states: Solid waste incinerators must comply with the requirement of 329 IAC 11-7 and 329 IAC 11-13 through 329 IAC 11-15. This

is clear that quarterly reports, required to be submitted under 329 IAC 11-14, must be submitted. The requirement for submitting a quarterly report of the type and amount of waste submitted is for the department to understand how the total solid waste is managed in the state. The department needs to know not just where the waste is going but the management of that waste. If the incinerator was no longer functioning, that waste would probably need to go to a landfill. Adequate disposal capacity must always be considered. Reporting from larger incinerators is very important and necessary to the department.

Comment: To the extent that the Second Notice of Comment referred to above requested comments on the solid waste processing rule which is broader than the specific regulatory language published in the Indiana Register notice, Lilly hereby incorporated in full its letter to Mr. Bruce Palin dated February 9, 2001 regarding solid waste processing facilities. Lilly strongly opposes the broad scope of the processing rule changes which have been suggested by IDEM at various recent public meetings. (ELC)

Response: The following comments from the letter submitted to Mr. Bruce Palin dated February 9, 2001 regarding solid waste processing facilities are incorporated regarding the sections that will be addressed in this rulemaking.

Comment: 329 IAC 11-9-2 Lilly strongly supports this provision, which could be appropriate for on-site facilities which require permits.

(k) Alternatives to operational requirements may be approved by the commissioner based on the following:

- (1) Site specific conditions.**
- (2) Activities occurring on-site.**
- (3) When the alternatives are as protective of human health and the environment as the operational requirements. (ELC)**

Response: This language was eliminated from the readoption rule. The scope of the readoption rule was narrowed and does not include changes of this type.

Comment: 329 IAC 11-9-2 These provisions are not all "location restrictions" so this provision is confusing. In addition, it is not advisable or necessary to reference other rules which are otherwise applicable.

(l) The land owner or the owner or operator of a facility shall comply with the following location restrictions:

- (1) The owner or operator of a facility shall, as applicable, obtain and comply with all permits and certifications required under the following:**
 - (A) Section 401 of the Clean Water Act, as amended December 21, 1995 (33 U.S.C. 1341).**
 - (B) Section 404 of the Clean Water Act, as amended December 21, 1995 (33 U.S.C. 1344).**
 - (C) 33 CFR 320 through 33 CFR 330 revised as of July 1, 1999.**
 - (D) Water pollution control board rules at 327 IAC 2.**
- (2) The owner or operator of a facility shall not locate a facility in violation of the endangered species siting restrictions at IC 14-22-34. (ELC)**

Response: This language was eliminated from the readoption rule. The scope of the readoption rule was narrowed and does not include changes of this type.

Comment: **329 IAC 11-9-5** Lilly strongly supports this provision, and this provision makes the rule consistent with the statutory authority.

Sec. 5. (a) This section applies to all permits for new solid waste facilities or major modifications of permits issued after March 20, 1990, except ~~those facilities exempt under IC 13-7-10-1.5(c)~~ **this section does not apply to a solid waste facility or a major modification of a permit that processes solid waste:**

- (1) that is generated by that person;**
- (2) processed at that site or by a wholly owned subsidiary owned by that person; and**
- (3) limited to use by only that person. (ELC)**

Response: This language was eliminated from the readoption rule. The scope of the readoption rule was narrowed and does not include changes of this type.

Comment: 329 IAC 11-14-1 An exemption for facilities which process only solid waste from the generating facility or an affiliated generating facility from this report should be included.

Sec. 1. (a) A quarterly tonnage report of solid waste received at the ~~solid waste processing~~ **permitted** facility must be submitted to the commissioner by the owner, operator, or permittee of that **permitted** facility. (ELC)

Response: A change to the present rule language in this section is being made to clarify that an incinerator that is permitted by rule under 329 IAC 11-19-2(a) and any facility that is not permitted under this article is exempt from submitting a quarterly report under 329 IAC 11-14.